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WASHINGTON, DC 20005-3934

EXAMINER

GREGG, MARY M

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3694

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,696	Applicant(s) CREVELING ET AL.	
	Examiner MARY GREGG	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final Office Action in response to communications received April 23, 2009. Claim 15 has been canceled. Claims 1, 7, 14, 16, 18 and 20 have been amended. No new claims have been added. Therefore, claims 1-14 and 16-20 are pending and addressed below.

Response to Amendments/Arguments

Claim Rejections - 35 USC § 101

2. Applicant's amendments with respect to claims 1-19 are sufficient to overcome the rejections set forth in the previous Office Action. The examiner withdraws the rejections.

Claim Rejections - 35 USC § 103

3. Applicant's arguments filed April 23, 2009 have been fully considered but they are not persuasive. In the remarks the applicant argues (1) that the combination of the prior art US Patent No. 6,154,729 by Cannon in view of US Pub No. 2002/0099649 by Lee does not teach or suggest the limitation "assessing a chargeback fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio". The applicant argues that Lee teaches fines levied on merchants with too many chargebacks and does not suggest a per-transaction fee. (2) that the prior art combination of the prior art US Patent No. 6,154,729 by Cannon in view of US Pub No. 2002/0099649 by Lee further in view of US Pub No. 2004/0030644 by Sharper does not teach the distinguishing feature argued (1), (3) that amended

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claims 14 and 20 is silent with respect the limitation “wherein the assessing of the fee promotes cost avoidance in resolving the disputed credit transactions”

In response to argument (1) that the combination of the prior art US Patent No. 6,154,729 by Cannon in view of US Pub No. 2002/0099649 by Lee does not teach or suggest the limitation “assessing a chargeback fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio”. The applicant argues that Lee teaches fines levied on merchants with too many chargebacks and does not suggest a per-transaction fee. The examiner respectfully disagrees. Lee in combination with Cannon explicitly teaches both that fees are applied to the merchant by the bank for each charge back and that the fines (fees) levied by the banks are for the merchant surpassing a threshold of the bank for chargebacks. Inherently each and every chargeback would be applied to the bank threshold parameter. Furthermore, the combination teaches that if the fines applied (i.e for each and every chargeback) exceed a percentage of the merchant's sales that the merchant can lose credit card issuers who accept credit payment. Therefore, the examiner maintains that the prior art teaches and/or suggest the limitation.

In response to argument (2) that the prior art combination of the prior art US Patent No. 6,154,729 by Cannon in view of US Pub No. 2002/0099649 by Lee further in view of US Pub No. 2004/0030644 by Sharper does not teach the distinguishing feature argued (1), please refer to response in argument (1).

In response to argument (3) that amended claims 14 and 20 is silent with respect the limitation “wherein the assessing of the fee promotes cost avoidance in resolving the

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disputed credit transactions”, the examiner respectfully disagrees. The prior art Lee in combination with Cannon explicitly teaches in para 0347 and 0348 a system for determining an optimal strategy for determining cost in resources in order to determine cutoff scores to determine continuation order acceptance. See rejection below.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 14 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In reference to Claims 1, 14 and 20:

Claims 1, 14 and 20 cite the limitation “promote cost avoidance”, “promoting cost avoidance” and “promote cost avoidance” respectively. The examiner cannot determine the metes and bounds of the action. How does the invention promote cost avoidance, what determines cost... For examination purposes the examiner is defining the limitation to be any method or system that determines an action based on optimizing cost reduction with respect to the cost of disputes.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. **Claims 1-2, 6-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,154,729 to Cannon (Cannon) in view of US Patent Applicant Publication 2002/0099649 to Lee (Lee).**

In reference to Claim 1:

Cannon teaches:

(Currently Amended) A method for processing credit transactions, comprising: storing a predetermined threshold ratio of disputed credit transactions to total credit transactions for a period of time (see col 3, lines 45-65, note that a stored threshold ratio is fairly suggested by the teaching that vendors with 'excessive' chargeback ratios are listed. The suggestion is fairly made by the need for there to be a measure -i.e. the predetermined threshold ratio-for determining what is 'excessive'); ...identifying using a computer-based system, a merchant with a disputed credit transaction in the period of time (see col 3, lines 45-65, note that merchants with 'excessive' chargebacks are listed on the report); determining using the computer-based sytem a number of the disputed

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credit transactions and a number of credit transactions involving the merchant in the period of time (see col 3, lines 45-65, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions); determining using the computer-based system, a ratio of the number of disputed credit transactions to the number of credit transactions for the merchant (see col 3, lines 45-65, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions);

Cannon does not explicitly teach:

...assessing using the computer-based system, a fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio, when the merchant's ratio is at least equal to the predetermined threshold ratio; and promoting avoidance in resolving the disputed credit transaction

Lee teaches:

... assessing using the computer-based system, a fee against the merchant for each disputed transaction ((Lee) para 0019 line 1) involving the merchant that exceeds the predetermined threshold ratio ((Lee) para 0019) , when the merchant's ratio is at least equal to the predetermined threshold ratio (see par 19, note that both a fee per chargeback and a fine for too many chargebacks (i.e. typically 1.5-3% of volume) are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold), ; and promoting avoidance in resolving the disputed credit transaction ((Lee) para 0343, para 0346, para 0347; wherein the

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prior art teaches cost analysis to determine if cost exceed benefit to determine if the order is "cut off")

It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon with the fee and fine features of Lee in order to have provided merchants with an incentive to take action to reduce chargebacks as taught implicitly by Lee since fines escalate if chargebacks continue unabated.

In reference to Claim 2:

Cannon in view of Lee teaches:

(Previously Presented) The method of claim 1 (see rejection of claim 1 above), wherein the period of time comprises thirty days (see Cannon col 3, lines 35-45 and col 4, lines 43-57, note the teaching of a monthly reporting cycle).

In reference to Claim 6:

Cannon in view of Lee teaches:

(Previously Presented) The method of claim 1 (see rejection of claim 1 above), further comprising: establishing the predetermined threshold ratio based on an average transaction volume of the merchant (See Cannon col 3, lines 45-55 and col 4, lines 43-57, note that ratio relates chargebacks to transactions. As such, it is fairly suggested that establishment of the ratio is based upon the transaction volume of the merchant since the volume is the factor by which the standard for 'excessive' is defined) (see rationale supporting obviousness and motivation to combine of claim 1 above)

In reference to Claim 7:

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Cannon in view of Lee teaches:

(Previously Amended) The method of claim 1 (see rejection of claim 1 above), further comprising: storing a threshold number of time periods in which the ratio of disputed credit transactions to total credit transactions may exceed the threshold ratio (see Lee par 19-21, note that Lee teaches the after months of escalating fines, the merchant may lose the privilege of receiving payment through credit card issuers. As such, this fairly teaches a second threshold based upon the length of time the merchant exceeds the predetermined threshold. Note further that a second threshold based on time is also an obvious duplication of the threshold taught by Cannon above, particularly in view of the time based penalty of Lee) determining a number of time periods in which the ratio of the number of disputed credit transactions to the number of credit transactions for the merchant is at least equal to the threshold value (see Lee par 19-21); and said assessing further comprising: assessing the chargeback fee against the merchant only for each disputed transaction that exceeds the predetermined threshold ratio, when the ratio is at least equal to the predetermined threshold ratio for the period of time and the number of time periods for the merchant is at least equal to the threshold number of time periods (see Lee par 19 in combination with 21, note that penalizing a merchant with fines is know and when combined with the period of time measure taught by Lee fairly suggests charging a fine based upon the number of time periods the merchant exceeds the threshold). (see rationale supporting obviousness and motivation to combine of claim 1 above)

In reference to Claim 8:

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Cannon in view of Lee teaches:

(Original) The method of claim 7 (see rejection of claim 7 above), wherein the threshold number of time periods is greater than one (see Lee par 21, note that the second threshold of Lee is reached after 'months' of escalating fines).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

In reference to Claim 9:

Cannon in view of Lee teaches:

(Previously Presented) The method of claim 8 (see rejection of claim 8 above), further comprising, before the assessing: generating a notice for transmission to the merchant when the number of time periods for the merchant is greater than zero and less than the threshold number of time periods, the notice including: the ratio of the number of disputed credit transactions to the number of credit transactions for the merchant, the predetermined threshold ratio, the number of time periods for the merchant and the threshold number of time periods (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice. Note that the contents of the claimed notice have been considered, but are non-functional descriptive material in so far as the notice could contain any material and the claimed invention would still operate the same. As such, the contents of the notice have not been given patentable weight so as to distinguish Applicant's claimed invention from the prior art). (see rationale supporting obviousness and motivation to combine of claim 1 above)

In reference to Claim 10:

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Cannon in view of Lee teaches:

(Original) The method of claim 9 (see rejection of claim 9 above), further comprising: transmitting the notice to the merchant (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice to the merchant). (see rationale supporting obviousness and motivation to combine of claim 1 above)

In reference to Claim 11:

Cannon in view of Lee teaches:

(Original) The method of claim 8 (see rejection of claim 8 above), further comprising: generating a notice for transmission to the merchant when the number of time periods for the merchant is greater than zero and less than the threshold number of time periods, the notice including at least proposed business solution for reducing the number of disputed credit transactions involving the merchant (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice. Note that the contents of the claimed notice have been considered, but are non-functional descriptive material in so far as the notice could contain any material and the claimed invention would still operate the same. As such, the contents of the notice have not been given patentable weight so as to distinguish Applicant's claimed invention from the prior art). (see rationale supporting obviousness and motivation to combine of claim 1 above)

In reference to Claim 13:

Cannon in view of Lee teaches:

(Previously Presented) The method of claim 7 (see rejection of claim 7 above), wherein the threshold number of time periods comprising comprises a threshold number of consecutive time periods (see Lee par 21, note that the second threshold of Lee is reached after 'months' of escalating fines).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

9. Claims 3-5, 12, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable Cannon in view of Lee and in further view of US Patent Application Publication 2004/0030644 to Sharper (Sharper).

In reference to Claim 3:

Cannon in view of Lee teaches:

(Previously Presented) The method of claim 1 (see rejection of claim 1 above),

The combination does not explicitly teach:

... wherein the predetermined threshold ratio comprises three percent.

Sharper teaches:

...wherein the predetermined threshold ratio comprises three percent (see par 10, note that a limit may be set at 1-3%) It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon in view of Lee with the particular threshold level taught by Sharper in order to have limited the percentage of chargebacks allowed to merchants as taught explicitly by Sharper (see par 10).

In reference to Claim 4:

Cannon in view of Lee teaches:

(Previously Presented) The method of claim 1 (see rejection of claim 1 above), but does not explicitly teach further comprising: establishing the predetermined threshold ratio based on an industry category including the merchant.

The combination suggest:

...establishing the predetermined threshold ratio based on an industry category including the merchant ((Lee) para 0346)

Sharper teaches

...establishing the predetermined threshold ratio based on an industry category including the merchant (see par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries). It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon in view of Lee with that industry differentiation of Sharper in order to have matched the risk of an industry with the level of fine as taught implicitly by Sharper since Sharper teaches the incidence of chargebacks varies across industries.

In reference to Claim 5:

Cannon in view of Lee and Sharper teaches:

(Previously Presented) The method of claim 4 (see rejection of claim 4 above), wherein the industry category comprising comprises a standard industrial classification code (see Lee par 101, note that the transaction summary variables include SIC codes, thus fairly suggesting their use in identifying the industry of the transaction). (see rationale supporting obviousness and motivation to combine of claim 4 above)

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In reference to Claim 12:

Cannon in view of Lee and Sharper teaches:

(Original) The method of claim 7 (see rejection of claim 7 above), wherein the threshold number of time periods is based on an industry category including the merchant (see par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries). (see rationale supporting obviousness and motivation to combine of claim 4 above)

In reference to Claim 14:

Cannon in view of Lee and Sharper teaches:

(Currently Amended) A method for processing credit transactions, comprising: calculating, using a computer-based system a ratio of disputed credit transactions to total credit transactions (see Cannon, col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions) for each of a plurality of industry categories for a previous period of time (see Sharper, par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries); determining, using the computer-based system a first threshold ratio for a first of the industry categories based on said calculating (see Cannon, col 3, lines 45-55 in combination with Sharper par 11, note that a threshold ratio is fairly suggested by the teaching that vendors with 'excessive' chargeback ratios are listed. The suggestion is fairly made by the need for there to be a measure -i.e. the predetermined threshold

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ratio- for determining what is 'excessive', note further the industry discussion of Sharper above) determining a second threshold ratio, lower than the first threshold ratio, for a second of the industry categories based on said calculating, the second of the industry categories having a lower ratio of disputed credit transaction to total credit transactions in the previous period of time than the first of the industry categories (see Cannon, col 3, lines 45-55 in combination with Sharper par 11, note that a plurality of threshold ratios is fairly suggested by the combination of these teachings since Sharper teaches that chargeback characteristics vary from industry to industry) determining a ratio of disputed credit transactions to total credit transactions for a merchant ((Cannon) Col 3 lines 45-65) in the first of the industry categories ((Lee) para 0019, para 0346; wherein banks levy fines for merchants having too many chargeback and further teaches product, customer, business and merchant are risk determinants; ((Sharper) para 0011; wherein chargeback vary from industry to industry which would make obvious that ratio would be relevant to industry); assessing a fee when the ratio of disputed credit transactions to total credit transactions is at least equal to the first threshold ratio ((Lee) para 0019); and promoting cost avoidance in resolving the disputed credit transactions ((Lee) para 0343, para 0346, para 0347; wherein the prior art teaches cost analysis to determine if cost exceed benefit to determine if the order is "cut off" which "promotes" cost avoidance)

(See rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

In reference to Claim 16:

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Cannon in view of Lee and Sharper teaches:

(Currently Amended) The method of claim 14 (see rejection of claim 14 above), wherein the fee is assessed for each disputed credit transaction that exceeds the first threshold ratio (see Lee par 19, note that both a fee per chargeback and a fine for too many chargebacks are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold). (see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

In reference to Claim 17:

Cannon in view of Lee and Sharper teaches:

(Previously Presented) The method of claim 14 (see rejection of claim 14 above), further comprising: determining a first threshold number of time periods in which the ratio of disputed credit transactions to total credit transactions for a merchant in the first of the industry categories exceeds the first threshold ratio, based on said calculating (see Lee par 19-21, note that Lee teaches the after months of escalating fines, the merchant may lose the privilege of receiving payment through credit card issuers. As such, this fairly teaches a second threshold based upon the length of time the merchant exceeds the predetermined threshold. Note further that a second threshold based on time is also an obvious duplication of the threshold taught by Cannon above, particularly in view of the time based penalty of Lee, see also Sharper par 11); and determining a second threshold number of time periods, lower than the first threshold number of time

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periods, in which the ratio of disputed credit transactions to total credit transactions for a merchant in the second of the industry categories may exceed the second threshold ratio, based on said calculating (see Lee par 19-21 and Sharper par 11).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

In reference to Claim 18:

Cannon in view of Lee and Sharper teaches:

(Currently Amended) The method of claim 17 (See rejection of claim 17 above), further comprising: determining a ratio of disputed credit transactions to total credit transactions for the merchant for a plurality of previous time periods (see Cannon col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions and Lee par 18-21); determining a number of time periods in which the ratio of disputed credit transactions to total credit transactions of the merchant is greater than the first threshold ratio (see Cannon col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions and Lee par 18-21); and

automatedly assessing a chargeback fee if the merchant's current ratio of disputed credit transactions to total credit transactions is at least equal to the first threshold ratio and the number of time periods for the merchant is at least equal to the first threshold number of time periods (see Lee see Lee par 19 in combination with 21, note that penalizing a merchant with fines is know and when combined with the period

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of time measure taught by Lee fairly suggests charging a fine based upon the number of time periods the merchant exceeds the threshold).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

In reference to Claim 19:

Cannon in view of Lee and Sharper teaches:

(Previously Presented) The method of claim 18 (see rejection of claim 18 above), further comprising: generating a notice for transmission to the merchant when the merchant's current ratio of disputed credit transactions to total credit transactions is at least equal to the first threshold ratio and the number of time periods for the merchant is less than the first threshold number of time periods, including a predetermined period of time in which the merchant must lower their ratio of disputed credit transactions to total credit transactions to avoid chargeback fees (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice. Note that the contents of the claimed notice have been considered, but are non-functional descriptive material in so far as the notice could contain any material and the claimed invention would still operate the same. As such, the contents of the notice have not been given patentable weight so as to distinguish Applicant's claimed invention from the prior art). (see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

In reference to Claim 20:

Cannon in view of Lee and Sharper teaches:

(Currently Amended) An apparatus for processing credit transactions, comprising: a processor (fairly suggested by the server, see Cannon, col 2, lines 38-50); a memory operative with the processor (fairly suggested by the server, see Cannon, col 2, lines 38-50) to store and retrieve a sequence of processing instructions that enable the processor to: determine an average ratio of disputed credit transactions to total credit transactions (see Cannon, col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions) for each of a plurality of industry categories (see Sharper, par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries); generate a threshold ratio of disputed credit transactions to total credit transactions ratio for a first of the industry categories based on its determined average ratio of disputed credit transactions to total credit transactions (see Cannon, col 3, lines 45-55 in combination with Sharper par 11, note that a threshold ratio is fairly suggested by the teaching that vendors with 'excessive' chargeback ratios are listed. The suggestion is fairly made by the need for there to be a measure -i.e. the predetermined threshold ratio-for determining what is 'excessive', note further the industry discussion of Sharper above); determine a ratio of disputed credit transactions to total credit transactions for a merchant in the first of the industry categories (see Cannon col 3, lines 45-55, in combination with Sharper par 11); and assess a fee to the merchant when the merchant's ratio of disputed credit transactions to total credit transactions is greater than the threshold ratio of disputed credit transactions to total credit transactions, the fee

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applied to each disputed transaction involving the merchant that causes the merchant to exceed the threshold ratio of disputed credit transactions to total credit transactions (see par 19, note that both a fee per chargeback and a fine for too many chargebacks are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold) promote cost avoidance in resolving the disputed credit transactions ((Lee) para 0343, para 0346, para 0347; wherein the prior art teaches cost analysis to determine if cost exceed benefit to determine if the order is "cut off" which "promotes" cost avoidance).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

Examiners Note

10. In the previous Action the examiner stated that the prior art was silent with respect to cost avoidance with respect to dispute resolution. However, upon further review of the art the examiner noted that US Pub No. 2002/0099649 A1 by Lee et al. explicitly teaches an system (eFalcon) which in order to reduce cost of chargebacks and administration fees for disputes determines a cutoff score to determined by incremental costs with respect to accounts in order to determine an action to reduce cost ((Lee) para 0343, para 0346, para 0347, para 0348).

Conclusion

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11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY GREGG whose telephone number is (571)270-5050. The examiner can normally be reached on 4/10.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 5712726712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G./
Examiner, Art Unit 3694

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694